1215

Mr Justice Swayne

Maps.

SUPREME COURT OF THE UNITED STATES.

No. ~~248.~~ 78

RUFUS S. LEE AND WILLIAM D. LEAVITT, PLAINTIFFS IN ERROR,

vs.

HENRY F. BLANDY AND FREDERICK J. L. BLANDY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

GEO. S. GIDEON, printer, 511 Ninth street, Washington, D. C.

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1817

At a special and adjourned term of the Circuit Court of the United States for the Seventh Circuit and Southern District of Ohio, began and held at the City of Cincinnati, on the third Tuesday of April, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the eighty-fourth, present the Honorable Humphrey H. Leavitt, a Judge of said Court, among others the following proceedings were had, to wit:

RUFUS S. LEE and
WILLIAM D. LEAVITT,
vs.
HENRY BLANDY and
FREDERICK J. L. BLANDY.

Be it remembered, that heretofore, to wit, on the 10th day of September, in the year of our Lord one thousand eight hundred and fifty-nine, the following summons was issued out of the Clerk's Office of the said Circuit Court to the Marshal of the Southern District of Ohio, clothed in the words and figures as follows, to wit:

Summons.

UNITED STATES OF AMERICA,
Southern District of Ohio. } *ss.*

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
To the Marshal of the Southern District of Ohio, greeting:

You are hereby commanded to summon Henry Blandy and Frederick J. L. Blandy, citizens of and residents in Southern District in the State of Ohio, if they be found in your District, to be and appear in the Circuit Court of the United States for Southern District of Ohio aforesaid, at Cincinnati, on the third Tuesday in the month of September, 1859, to answer unto Rufus S. Lee and William D. Leavitt, of a plea of trespass on the case, damages $50,000, and have you then and there this writ. Witness the Honorable Roger B. Taney, Chief Justice of the United States, this 10th day of September, A. D., 1859, and in the 84th year of the Independence of the United States of America.

[seal.] Attest JNO. McLEAN, JR., Clerk.

Endorsed on said summons is the following: acknowledgment for security of costs, to wit, T. C. Batler, Jr., acknowledges himself security for all costs for which the plaintiff may be liable in this suit. See precipe, also the following, to wit:

Acknowledgment of Security.

Suit brought to recover damages for an infringement of a patent granted to Nicholas G. Norcross, January 15, 1860, for improvements in circular saw-mills, and assigned to plaintiff damages $50,000. Lee and Fisher, attorneys for plaintiff, and which said writ was afterwards, to wit, on the third Tuesday of September, 1859, duly returned by the Marshal aforesaid with his proceedings endorsed thereon as follows, to wit:

Endorsement back of Summons.

Received the within summons September 16, 1859, and on the same day served said writ on the defendant, Frederick J. L. Blandy, by delivering to him in person a certified copy thereof, and also on the other defendant, Henry Blandy, by delivering to him a certified copy of said writ on the 17th day of September, 1859. Lewis W. Sefford, U. S. Marshal for the Southern District of Ohio. By E. F. Cox, his Deputy. And now here, to wit: on the twentieth day of September, in the year last aforesaid, came the plaintiffs by their attorneys, and filed their certain declaration clothed in the words and figures as follows, to wit:

Return.

Circuit Court of the United States, for the Seventh Circuit and Southern District of Ohio, October term, A. D., 1859.

Declaration.

Rufus S. Lee William D. Leavitt,	Trespass on the case,
vs.	
Henry Blandy and Frederick J. L. Blandy.	No. 1238.

The plaintiffs, Rufus S. Lee and William D. Leavitt, come and complain of the defendants, Henry Blandy and Frederck J. L. Blandy, in a plea of trespass on the case; for that whereas, Nicholas G. Norcross, before and at the time of the making of the letters patent, and of the committing the grievances by the said defendants, hereinafter next mentioned, was the original and first invention of certain new and useful improvements in circular saw-mills, to wit: at Lowell, in the State of Massachusetts, to wit: in the District aforesaid, and thereupon heretofore to wit: on the fifteenth day of January, A. D., 1850, at the city of Washington, to wit: in the District aforesaid, certain letters patent, under the hands of the Secretary of the Interior of the United States, with the seal of the Patent Office of the United States thereto affixed, countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, were granted to the said Nicholas G. Norcross, (which letters patent, or a duly authenticated copy thereof, the plaintiffs now bring into Court, whereby was granted and secured to the said Nicholas G. Norcross, his heirs, administrators or

assigns, for the term of fourteen years from said 15th day of January, A. D., 1850, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said invention and improvement, a full and exact description of which, with the mode of constructing and applying the same, is set forth in the written specification or description of the said Nicholas G. Norcross, in the words of the said Norcross, filed in the Patent Office of the United States, before the granting of said letters patent, and made part of the same, as by reference to the aforesaid specification or description (here brought into Court, as aforesaid,) will more fully and at large appear.

The plaintiffs further say, that said invention and improvement, so patented, was new and useful; that the said Nicholas G. Norcross was, at the time of his application for said patent, a citizen of the United States; that he was the original and first inventor of said invention and improvement so patented, and that the same was not known or used before his said invention, and was not in public use, or on sale with his consent or allowance for more than two years before his application for said letters patent.

The plaintiffs further say that afterwards, to wit: on the twenty-eighth day of March, A. D., 1856, the said Nicholas G. Norcross, by his written assignment of the date last aforesaid, for a valuable consideration therein mentioned, assigned to plaintiffs the exclusive right of making, using and vending said invention and improvement as secured by the aforesaid letters patent, within the States of Ohio, Kentucky, Indiana, Illinois, Michigan, Missouri, Tennessee, Wisconsin and Iowa, which assignment was duly recorded in the Patent Office, and which assignment or a certified copy thereof from said Patent Office, the plaintiffs here bring into Court. The plaintiffs further say that they have heretofore made, constructed, used, and vended to others to be used in said invention and improvement to their great advantage and profits, to wit: at the District aforesaid. Yet the said defendants, well knowing the premises, but contriving and wrongfully intending to injure the said plaintiffs, and to deprive them of the profits, benefits and advantages which they might and otherwise would have derived and acquired from the making, constructing, using, vending to others to be used, the said invention and improvements, after the making of said letters patent, and of said assignments to plaintiffs as aforesaid, and within the said term of years in the said letters patent mentioned, to wit: on the twenty-ninth day of March, A. D., 1856, at the county of Muskingham, in the Sate of Ohio, to wit: in the District aforesaid, and on divers other days and times between that day and the commencement of this suit

unlawfully and unjustly against the will of said plaintiffs, and without the leave or license of said plaintiffs did make a great number, to wit: one thousand circular saw-mills in imitation of said invention, in breach of said letters patent, and in violation and infringement of the exclusive right thereto so as aforesaid acquired by the plaintiffs, and contrary to the form of the statutes in such case made and provided, whereby the said plaintiffs, assignees as aforesaid have been greatly injured and deprived of a a great part of the profits and advantages which they might and otherwise would have derived and acquired from the said invention, to wit: at the District aforesaid, and also for that whereas the said Nicholas G. Norcross, before and at the time of the making of the letters patent and of the committing of the grievances by the said defendants hereinafter next mentioned, was the original and first inventor of certain new and useful improvements in circular saw-mills, to wit: in the District aforesaid, and thereupon, heretofore, to wit: on the 15th day of January, A. D., 1850, at the city of Washington, to wit: in the District aforesaid, certain letters patent under the hand of the Secretary of the Interior of the United States, with the seal of the Patent Office of the United States thereto affixed, countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid were granted to the said Nicholas G. Norcross, (which letters patent or a duly authenticated copy thereof the plaintiffs now bring into Court, whereby was granted and secured to the said Nicholas G. Norcross, his heirs, administrators, or assigns for the term of fourteen years from said 15th day of January, A. D., 1850, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, a full and exact description of which, with the mode of constructing and applying the same, is set forth in the written specification or description of the said Nicholas G. Norcross, in the words of the said Norcross, filed in the Patent Office of the United States, before the granting of said letters patent, and made part of the same, as by reference to the aforesaid specification or description, there brought into Court as aforesaid, will more fully and at large appear.

The plaintiffs further say that said invention and improvement so patented was new and useful; that the said Nicholas G. Norcross was, at the time of his application for said patent, a citizen of the United States; that he was the original and first inventor of said invention and improvement so patented, and that the same, was not known or used before his said invention, and was not in public use or on sale with his consent or allowance for more than two years before his application for said letters patent.

And plaintiffs further say that afterwards, to wit: on the twenty-eighth day of March, A. D., 1856, the said Nicholas G. Norcross, by his written assignment of the date last aforesaid, for a valuable consideration therein mentioned, assigned to plaintiffs the exclusive right of making, using and vending said invention and improvements as secured by the aforesaid letters patent within the States of Ohio, Kentucky, Indiana, Illinois, Michigan, Missouri, Tennessee, Wisconsin and Iowa, which assignment was duly recorded in the Patent Office, and which, or a duly authenticated copy thereof the plaintiffs here bring into Court. The plaintiffs further say, that they have heretofore made, constructed and vended to others to be used, said invention and improvement to their great advantage and profit, to wit: at the District aforesaid. Yet the said defendants, well knowing the premises, but farther contriving and wrongfully intending to injure the said plaintiffs, and to deprive them of the profits, benefits and advantages which they might and otherwise would have derived and acquired from the making, constructing and using, vending to others to be used, the said invention and improvement, after the making of said letters patent, and of the said assignment to plaintiffs as aforesaid, and within the said term of years in the said letters patent mentioned afterwards, to wit: on the first day of April, A. D., 1856, at the county of Muskingham, in the State of Ohio, to wit: in the District aforesaid, and on divers other days and times between that day and the commencement of this suit, unlawfully and unjustly, against the will of said plaintiffs, and without the leave or license of the said plaintiffs, did vend to others to be used, a great number, to wit: one thousand circular saw-mills in imitation of said invention, in breach of said letters patent, and in violation and infringement of the exclusive right thereto, so as aforesaid acquired by the plaintiffs, and contrary to the form of the statutes in such cases made and provided, whereby the said plaintiffs, assignees as aforesaid, have been greatly injured and deprived of a great part of the profits and advantages which they might and otherwise would have derived and acquired from the said invention, to wit: at the District aforesaid, to the actual damage of the plaintiffs, fifty thousand dollars, and therefore they sue, by their attorneys, Lee and Fisher, and now here, to wit, on the twenty-third day of November, in the year of our Lord one thousand eight hundred and fifty-nine,

"on motion of defendants, by their attorneys, it
O. B. K., 416. is ordered that this case stand continued at cost
of said defendants for this term, and on motion of plaintiffs, by their attorney, it is ordered that said costs, taxed at $, be paid within ten days, and in default thereof, that execution issue therefor. And now here, to wit: on the 14th day of January, in the year of our Lord one thousand eight

hundred and sixty, this case is "continued on motion of defendants to April term." And now here, to wit: on the seventeenth day of April, in the term of April, to which term this cause was continued, and in the year last aforesaid, "On motion of Messrs. Coffin and Mitchell, attorneys for defendants herein, the default for plea is hereby set aside, and leave given said defendants to plead forthwith, and plea filed," and which said plea, filed on the day and year last aforesaid, is in the words and figures as follows, to wit:

O. B. K., 354.

O. B. K., 496.

RUFUS S. LEE and WILLIAM D. LEAVITT, *vs.* HENRY BLANDY and FREDERICK J. L. BLANDY. } Circuit Court U. S. Southern District of Ohio.

And said defendants come and defend, &c., and say that they are not guilty of the said supposed grievances above charged against them, or any of them, in manner and form as the plaintiffs have declared against them, &c., and of this they put themselves upon the country, &c. Coffin & Mitchell, Defendants' Attorneys. The plaintiffs will take notice that the defendants on the trial of the above cause will give in evidence, in addition to the matters under the general issue in bar of the plaintiffs' right of action, that the said Norcross was not the original and first inventor or discoverer of the said supposed improvement described and referred to in the plaintiffs' declaration; that said Norcross was not the original and first discoverer or inventor of any substantial or material part of said supposed improvement so patented to said Norcross, but that said improvement and a substantial and material part thereof claimed by said Norcross as new, had been invented and discovered by Edward Bancroft, of the city of Philadelphia, before the time of the alleged invention thereof by said Norcross, and that for said invention the said Bancroft obtained and had granted to him letters patent from the United States in due form of law, which said letters patent were dated , 1849, and the improvement so patented to said Bancroft previous to the alleged invention of said Norcross, is identical in principal in all its material parts with that claimed by said Norcross, and that the said Bancroft was the first and original inventor thereof.

And for a further defence, the defendants will give in evidence that said improvement in the plaintiffs' declaration mentioned, and claimed to be the invention of said Norcross, and all the several and material parts thereof, had been in public use and publicly known and used before and anterior to the supposed invention thereof by said Norcross, all of which was known to him, and

that among others had been known to W. Herrick, now residing at Northampton county, Mass.; to Cyrus Newhall, of the firm of Newhall & Stebbens, now residing in Hinsdale, Cheshire county, New Hampshire; to Edward Goodnow, now residing in said village of Hinsdale, Cheshire county, New Hampshire; to Baxter D. Whitney, residing in Winchendon, Worcester county, Mass.; to John S. Emery, of Orange, Franklin county, Mass.; to John S. Emery, of Orange, Franklin county Mass.; to Marshall Kingsman, of Winchester, Cheshire county, New Hampshire; to Edward Bancroft, of Philadelphia, Pa.; to S. R. Smith, of the city of Cincinnati; to George Page, of Baltimore, Md., all of whom possessed a knowledge of said improvement prior to said invention by said Norcross; and that the said improvement claimed by said Norcross, and patented to him as aforesaid, and the several substantial and material parts thereof had been used—had been made, and the same was in public use prior to the said alleged invention by said Norcross, at the manufactory of Baxter D. Whitney, in the town of Whinchendon, Worcester county, Mass.; at the manufactury of A. & E. Goodnow, in the town of Hinsdale, Cheshire county, New Hampshire; at the manufactory of Cyrus Newhall, in said village of Hinsdale, Cheshire county, New Hampshire; and at the manufactory of Newhall & Stibbens, in said village of Hinsdale; at Ely & Co.'s circular saw-mill, in South Vernon Township, Franklin county, Mass.; at Wells & Co.'s manufactory in Florence, Hampshire county, Mass.; at Hodley & Co.'s manufactury at Goff's Falls, a station in Hillsboro', New Hampshire, where the Concord railroad crosses the Merrimac river; at Marshall Kingsman's mill, in Winchester, Cheshire county, New Hampshire. That the places above named are small towns, the manufacturing principally by water; and the said several manufacturing establishments above named in said several places, and prominent places in the several towns well-known and easily found, and that said several persons hereinbefore named, possessed a knowledge that the said improvement described in the said Norcross patent, and the material parts thereof, had been used in the several places above named long prior to the supposed invention of said Norcross. And these defendants intend, for further defence, to prove that the said Norcross was not the original and first inventor or discoverer of the application of rocker-boxes to circular saw-mills, but that rocker-boxes, as described by said Norcross, were, long prior to his supposed invention, made, used and applied to circular saw-mills; that rocker-boxes for that purpose were, long prior to said pretended invention of Norcross, well known and often made and used; that among the numerous persons who possessed a prior knowldege of said boxes, and that they were so made, used and

applied as aforesaid, long before said Norcross pretended invention. The defendants here state the names and places of residence of those whom they intend to prove to have possessed said prior knowledge, and also the several places where the said boxes were made, used and applied for the purpose aforesaid—that is to say: W. Herrick, residing in Northampton, Hampshire county, Mass., at his own manufactury in said town, his shop being situated on the west side of the freight-house of the Connecticut River Railroad Co., and also at Wells & Co.'s factory at Florence, in said county in Mass.; Cyrus Newhall, residing in the village of Hinsdale, Cheshire county, New Hampshire; at the factory of A. & E. Goodnow, in said village of Hinsdale; at at the factory of said Newhall, in said village of Hinsdale; at the the shop of Newhall & Stebbins, in said village of Hinsdale; at the shop of Baxter D. Whitney, in the village of Whinchedon, Worcester county, Mass.; at the mill of Marshall Kingsman, in the village of Winchester, Cheshire county, New Hampshire; *Edwin Goodnow*, residing in the village of Hinsdale, Cheshire county, New Hampshire; at the factory of A. E. Goodnow, in said village of Hinsdale; at the factory of Edwin Goodnow, in said village of Hinsdale; at the mill of said A. & E. Goodnow, in said village of Hinsdale; at the factory of Cyrus Newhall, in said village of Hinsdale; and at the shop of Newhall & Stibbens, in said village of Hinsdale, Cheshire county, New Hampshire; *Baxter D. Whitney*, residing at Whinchendon, Worcester county, Mass., at his own shop in said town; John S. Emery, residing now in Orange, Franklin county, Mass.; at the shop of A. & E. Goodnow, in said village of Hinsdale, New Hampshire; at the shop of Cyrus Newhall, in said town of Hinsdale, New Hampshire; at the mill of said Emery, in said village of Hinsdale, and at his mill in Orange, the place of his residence aforesaid; Marshall Kingsman, residing in Winchester, Cheshire county, New Hampshire; at the shop of Cyrus Newhall, in Hinsdale aforesaid, and at the mill of said Kingsman, in Winchester aforesaid, where the said Kingsman is now, and has been using the same; Samuel R. Smith, residing in Cincinnati; at the circular sawmill of Ely & Co., in South Vernon, Franklin county, Mass.; at Herrick's factory in Northampton, Mass.; at Wells & Co.'s manufactury, in Florence, Hampshire county, Mass.; at Hadley & Co.'s manufactory at Gaff's Falls aforesaid, in New Hampshire.

And the said defendants intend for a further defence to prove that the said Norcross was not the original and first inventor or discoverer of pivot-boxes, and was not the original and first inventor or discoverer of the use of pivot-boxes on said mandrils, but that pivot-boxes prior to the supposed invention of said Norcross were well known, and were made and were used prior to said supposed inven-

tion of said Norcross, and the use of pivot boxes in said mandrels was well known before said supposed invention of said Norcross, and that pivot-boxes were used on saw mandrils substantially as claimed by said Norcross before said supposed invention by said Norcross, and that among the persons who possessed a prior knowledge of pivot-boxes and of the making of the same, and of their use aforesaid, and the use of pivot-boxes on saw mandrils as aforesaid, before said Norcross' supposed invention; the defendants here state the names and places of residence of those whom they intend to prove to have possessed said knowledge, and also of the several places where said boxes were made, and where applied to said mills, and where used, and also the places where pivot-boxes on said mandrils were used and were in use, that is to say, pivot-boxes, the making and use of them, the use of pivot-boxes on saw mandrils, and that pivot-boxes were used on saw mandrils substantially as claimed in the said Norcross' patent, were each and all known to W. Herrick, residing at Northampton, Hampshire County, Mass., at his own factory in said town of Northampshire, Hampshire County, Mass., the said factory being situated near to and on the west side of the Freight House of the Connecticut River Railroad Company in said Northampton. All prior to said supposed invention of said Norcross, pivot-boxes, their use, and the making of pivot-boxes, the use of pivot-boxes on saw mandrils, and that pivot-boxes were used on saw mandrils substantially as claimed by said Norcross were each and all known to Cyrus Newhall, now of the firm of Newhall & Stibbins, now residing in the town of Hinsdale, Chesline County, New Hampshire; at the shop of Baxter D. Whitney, in the village of Whinchendon, Worcester County, Mass.; at the shop of A. E. Goodnow, and at the mill of said A. E. Goodnow, the shop and the mill being each in the town of Hinsdale, Cheshire County, N. H.; at the factory of Newhall & Stibbins, in said village of Hinsdale, and at his, the said Newhall's own factory, in said town of Hinsdale, where he resides as aforesaid; all of which prior knowledge, and of the use aforesaid; at the several places aforesaid, were prior to said supposed invention of said Norcross. And that said Cyrus Newhall, more than fifteen years ago, and prior to said invention of said Norcross, manufactured at said village of Hinsdale, Cheshire County, N. H., for sundry persons, pivot-boxes to be used on saw mandrils, and for that purpose; that some of said pivot-boxes to be used as aforesaid, were made at the shop of said Newhall, in said village; some at the shop of A. & E. Goodnow, in said village; that some of said pivot-boxes so made by said Newhall, were used on saw mandrils at the shop of said Newhall in said village of Hinsdale; some of said pivot-boxes were used on saw mandrils at the mill of A. & E. Goodnow, in said town of Hinsdale; that said arbors with pivot-boxes as claimed by said Norcross, were made by said Newhall at his shop at

Hinsdale aforesaid, prior to said invention of Norcross for ——— Alexander, who, previous to said supposed invention used the same at his mill in Winchester, Cheshire County, N. H.; that said Newhall, prior to said invention of Norcross, made at his shop in Hinsdale aforesaid, saw arbors with pivot-boxes substantially as claimed by Norcross and Marshall Kingsman, of Winchester, Cheshire County, N. H., is now using at his saw-mill in said village of Winchester, the said saw arbors, with pivot-boxes so made by said Newhall, which said pivot-boxes and saw arbors made as aforesaid by said Newhall at his shop in Hinsdale, have been used and in use at the said saw-mills of Marshall Kingsman, from a period long prior to said supposed invention of Norcross, and that said Cyrus Newhall, residing as aforesaid at Hinsdale, N. H., has made and used at his shop in said village for twelve years last past, and prior to said supposed invention of Norcross, pivot boxes on saw mandrils, and has made at his shop aforesaid, pivot-boxes, and applied the same to circular saw-mills substantially as claimed by Norcross, long prior to said supposed invention of Norcross, and the making and applying of pivot-boxes to said mills as claimed by Norcross, was well known and used prior to said pretended invention at all the establishments for the manufacture of machinery for circular saw-mills in said village of Hinsdale, N. H. And these defendants for further defence to prove that the said Norcross was not the original and first inventor or discoverer of the improvement described in the patent of said Norcross referred to in the plaintiff declaration, and was not the original and first inventor or discoverer of any substantial part of said supposed improvement, so patented to said Norcross, but that said improvement and a substantial material part thereof, claimed by said Norcross as new, had been invented and discovered by George Page, of Baltimore, Maryland, before the time of the alleged invention thereof by said Norcross, and that for said invention, the said Page obtained and had granted to him letters patent from the United States in due form of law, which said letters patent were dated 16th July, 1841, and have been since extended, and the improvment so patented to said Page previous to the alleged invention of said Norcross, is identical in principle in all its material parts with that claimed by said Norcross, and that the said Page was the first and original inventor thereof. Coffin and Mitchell, attorneys for defendant.

O. B. K. 523.

Cincinnati, March 17, 1860. And now here, to wit: on the fourth day of May, in the year last aforesaid, came the parties by their attorneys, and thereupon came a jury, to wit: Theodore L. Smith, Samuel Ewing, Horace Luce, D. W. Dryden, R. A. Constable, David Fisher, George Olinger, John W. Dudley, William L. Hudson, William R. Bennett, Amos Layman, and D. G. Fitch, who were duly empannelled and sworn well and truly to try the issue joined between the parties herein, and the evi-

dence and arguments of counsel not being concluded, the Court adjourned the jury until to-morrow morning at half past nine o'clock, to which time this case is continued. And now here, to wit: on the fifth day of May, in the year last aforesaid,
O. B. K. 524. "came the parties by their attorneys, and also the jurors heretofore empannelled and sworn herein, and the evidence not being concluded, the Court adjourned the jury until to-morrow, at half past nine o'clock, A. M., to which time this case is continued.

"And on the 8th day of May, in the year last aforesaid," came again the parties, and also the jurors heretofore
O. B. K., 525. empannelled and sworn herein, and the evidence not being concluded the Court adjourned the jury until to-morrow, at 9 o'clock, A. M., to which time this case is continued. And now here, to wit: on the ninth day of May, in the year last aforesaid, "came again the parties by their attor-
O. B. K., 526. neys, and also the jury heretofore empannelled, and sworn to well and truly try the issue joined between the parties herein, and the evidence not being concluded, the Court adjourned the jury until to-morrow, at 9½ o'clock, and until which time this case is continued." And now here, to wit: on the tenth day of May, "came the parties by their attorneys, and
O. B. K., 527. also the jurors heretofore empannelled, and sworn well and truly to try the issue joined between the parties herein, and the evidence not being concluded, the Court adjourned the jury until to-morrow, at 9½ o'clock, A. M., to which time this case is continued." And on the 11th day of May, in the year last aforesaid, "came the parties, and also the jurors
O. B. K., 527. heretofore empannelled and sworn herein, and the evidence not being concluded, the Court adjourned the jury until to-morrow, at 9½ o'clock, A. M., to which time this case is continued." And on the 12th day of May, in the year last aforesaid, "this day came again the parties by their attorneys,
O. B. K., 529. and also the jurors heretofore empannelled and sworn herein, and the evidence being finished, but the Counsel not having concluded their arguments, the Court adjourned the jury until Monday next, at 9½ o'clock, A. M., to which time this case is continued." And on the fourteenth day of May, in the year last aforesaid, "came the parties by their attorneys, and
O. B. K., 530. also the jurors heretofore empannelled, and sworn well and truly to try the issue joined between the parties herein, and the arguments of counsel not being concluded, the Court adjourned the jury until to-morrow, at 9½ o'clock, A. M., to which time this case is continued." And on the fifteenth day of May, in the year last aforesaid, "this day again the parties by their

attorneys, and also "came the jurors heretofore
O. B. K., 531. empannelled, and sworn well and truly to try the issue joined between the parties herein, and the counsel not having concluded their arguments, the Court adjourned the jury until to-morrow, at half-past nine o'clock, A. M., to which time this case is continued." And on the 16th day of May, in the year last aforesaid, "came again the parties by their attorneys,
O. B. K., 531. and also the jurors heretofore empannelled, and sworn to well and truly to try the issue joined between the parties herein, and the cause being finished, and having been elaborately argued by counsel, the Court adjourned the jury until to-morrow, at half-past 9 o'clock, A. M., to which time this case is continued." And now here, to wit: on the 17th day of May, in the year last aforesaid, "came the parties by their
O. B. K., 532. attorneys, and also the jurors heretofore empannelled, and sworn well and truly to try the issue joined between the parties in this case, who, upon their oaths do say, that the said defendants are not guilty in manner and form as the other said plaintiff hath complained against them." And now here, to wit: on the thirty-first day of May, in the year last
O. B. K., 541. aforesaid, "came the plaintiffs by Lee & Fisher, their attorneys, and presented a Bill of Exceptions, 'taken to the rulings and charge of the Court in the trial of this case' by the plaintiffs during the present term, which said bill was signed, sealed, and ordered to be made part of the record of this cause," and which said Bill of Exceptions, filed on the fourteenth day of June, in the year last aforesaid, is clothed in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT, *Southern District of Ohio.*

Bill of Exceptions.

RUFUS S. LEE, AND WILLIAM D. LEAVITT,
vs.
HENRY BLANDY, AND FREDERICK J. L. BLANDY.

Be it remembered, that on the trial of the above cause, the plaintiff, to sustain the issue joined on their part, put in evidence a certified copy of the patent granting to Nicholas G. Norcross, January 15th, 1850, for an improvement in circular saw mills, which said copy is hereto appended, marked, "Exhibit A." Plaintiff also offered, and put in evidence a certified copy of an assignment by said Nicholas G. Norcross to plaintiffs of said patent, within the States of Ohio, Kentucky, Indiana, Illinois, Michigan, Wisconsin, Iowa, Missouri, and Tennessee, which assignment was dated March 28th, 1856, and recorded in the Patent Office, October

20th, 1859. Plaintiffs then offered to prove, that the specifications were sufficiently clear and exact, to enable a skillful mechanic to construct the machine, but the necessity of such proof was waived by the defendants. And thereupon, the plaintiffs having proved by George H. Knight, a witness, facts material in the case, the defendants' counsel, on cross-examination, asked said witness the following question: "Has the mode of driving machinery by a belt ever been used before, and how old is it?" —to which question the plaintiffs' counsel objected, because it tended to attack the novelty of the patented invention, and no sufficient notice had been given for this purpose. But the Court overruled said objection, and decided that, (as the patentee had not made a distinct claim for that arraignment, the question might be put, and thereupon the witness answered—"I know of it as far back as my knowledge of machinery, and I have been acquainted with machinery for 15 or 16 years." To which question, ruling of the Court, and answer of the witness, the plaintiffs excepted. 2. And thereupon, the plaintiffs offered to sustain on their part the issue joined, the plaintiff William D. Leavitt, as a witness in his own behalf, claiming that he was competent under the Laws of the State of Ohio, and entitled to testify as a witness for plaintiffs. But the defendants objected to said witness, on the ground that he was disqualified on the ground of being a party to the record and suits, which objection the Court sustained, and held that said witness was incompetent, and refused to permit him to testify, on the ground that he was a party to the record and suit, and on account of rule No. 8, of this Court, providing, that a party to this suit is incompetent as a witness therein; to which ruling the plaintiffs excepted, and the plaintiffs, having introduced various other testimnoy, rested their cause.

Thereupon the defendants, to sustain the issue on their part, offered in evidence a certified copy of a patent granted by the Government of the United States to George Page, on July 16th, 1841, hereto appended, marked "B," to the admission of which patent of said George Page, plaintiffs objected because the notice had not been filed thirty days before trial, nor served thirty days before the commencement of the term, it having been made to appear that said notice was served on plaintiffs' counsel on March 19th, 1860, and was filed in Court on April 17th, 1860, that being the first day of the April term, 1860, and this cause called for trial, and the trial commenced on the fourth day of May, 1860, but the Court overruled said objection, and held that it was sufficient if the notice was served thirty days before the trial, and that it might be filed at any time, to which ruling the plaintiffs excepted. 5. Defendants thereupon offered in evidence a patent granted to Edward Bancroft by the Government of the United States, dated October 9th, 1849, for an improvement in hanging shafts in mills, to the admission of which patent of said Edward Ban-

croft, plaintiffs objected on account of the want of sufficient notice, and plaintiffs produced another patent granted by the Government of the United States to said Edward Bancroft for improvements in mill shafting, dated May 22d, 1849, and claimed that the notice should have specified which of said patents the defendants intended to put in evidence, but the Court overruled said objection, to which ruling plaintiffs excepted. Defendants' counsel offered plaintiff to elect which of said patents should go in evidence, and plaintiffs' counsel refusing to elect, the Court allowed the patent offered by defendants to go in evidence, to which ruling the plaintiffs excepted. Defendants thereupon called to the stand and examined as a witness one Jabez Reynolds, and asked of him the following questions: "Do you know any thing of a journal-box used by Edward Bancroft, and described in his patent?" to which question the plaintiffs objected, because it tended to attack the novelty of plaintiffs' patent, and no sufficient notice had given to entitle the defendants to make such proof, but the Court overruled said objection, and directed the witness to answer such questions, to which ruling the plaintiffs excepted, and thereupon said witness answered: "I know he makes a box. This box hangs upon permanent centres, and can move either way. It is sometimes fitted up on screwed centres, and sometimes on pivot centres." 8. During the progress of their evidence, defendants examined as a witness one Samuel R. Smith, who, having testified that he considered lateral motion in a saw of no utility, was asked by plaintiff in cross-examination, "Did you not obtain a patent for a machine permitting lateral play?" to which he answered, "I am patentee with Mr. Lane. My saw is so arranged that play can be permitted or stopped." Plaintiffs also asked the following question, producing at the same time a *circular* to the witness, "What do you say to this passage, which I will read?" and thereupon the plaintiffs read to him the following passage: "Lane & Bodley's circular saw-mill is different from other circular saw-mills in at least three important particulars. First. It is found necessary in making large circular saws, to permit a certain amount of end motion, called generally lateral motion, to the saw mandril. One of the oldest circular saw-mill patents claims an unrestricted lateral motion" of the mandril, whilst the forward edge of the saw runs between rollers or pins to retain it in position. It is impossible, with this arrangement, to saw lumber of an even thickness, as the pins cannot confine closely the outer edge of the saw without creating heat, and whatever freedom it has here gives inaccuracy to the lumber. Various plans have been patented with various degrees of success. One of the claims of Lane & Bodley's patent is for the described mechanism, whereby the saw may be fixed rigidly in any position, or allowed lateral play to any desired extent, and returned automatically to its original position when released, and by means of which its position may be varied at pleas-

ure. A collar on a central portion of the mandril is rabited in a journal-box confined between elastic cushions, and they (the cushions) compressed by temper-screws. By means of these screws the amount of elasticity (and consequent lateral motion of the mandril) to be permitted, is adjustable, whilst by relaxing one screw and advancing the other, the position of the saw can be changed, a matter sometimes of great importance. The position of this collar being remote from the saw, should any heat be generated, (none should be,) it is not communicated to it, a matter of the last importance, whilst the rigidity of the mandril is increased by this central bearing. "You say here that lateral motion is necessary, and then come into Court and swear that it is not, do you?" to which the witness answered, "I say in that circular that the rigid way is the way to do good work," and the plaintiffs further asked the witness, "Do you not send these circulars away?" to which the witness answered, "Yes; I have sent these circulars away." Plaintiffs also asked the witness, "How are you interested in the sale of Lane & Bodley's mills, made under your patent?" to which the witness replied, "They pay me a tariff on the mills;" and also, "When you sell a saw, do you not deliver one of the circulars as descriptive of it?" to which the witness replied, "Yes; but it is the circular of Lane & Bodley, and I am not responsible for its contents and statements," and thereupon the defendants having closed evidence, the plaintiffs in rebuttal, offered in evidence the passage in said circular, read as aforesaid to said witness, Smith, to the admission of which the defendants objected, among other grounds, on the ground that the attention of the witness had not been called to the place where, and the time when he delivered said circular containing the aforesaid passage, which objection the Court sustained, and refused to admit the aforesaid passage from said circular in evidence, to which ruling the plaintiffs excepted. And thereupon the plaintiffs asked the Court to charge the jury as follows:

1. The improvements on the Norcross patent are two in number. The first improvement consists in providing for the saw a means of permitting lateral motion, while at the same time the journals shall fit tight in the boxes, and the spilling of the oil be prevented.

The second improvement consists in the application of a re-acting agent to the saw mandril to restore it to its place after lateral motion has been permitted. 2. If the defendants have used the rocker-boxes and swing frame described in the Norcross patent, or a mechanical equivalent therefor, to permit lateral motion in a saw mandril, they having infringed the plaintiffs' patent.

3. If the defendants have used the belt described in the Norcross patent as a re-acting agent, or a mechanical equivalent therefor, or a contrivance substantially the same in principle, for the purpose of restoring the said to line when it has been once deflected, they have infringed the plaintiffs' patent.

4. If the jury find that the plaintiffs was the first to combine a re-acting agent with any saw permitting lateral motion in the mandril, and the defendants have used substantially the same re-acting agent in combination with a saw permitting lateral motion in the mandril, they have infringed the plaintiffs' patent.

5. That the patent is for an entire machine, and the use of any part of the machine which performs a new and useful function, or a mechanical equivalent therefor, will be an infringement of the patent. There was testimony tending to prove that defendants had not made or used a belt, swing frame or rocker-box either in combination or separately, to give lateral motion, and testimony tending to prove that defendants did not give lateral motion in the manner described n the Norcross patent, but the Court refused to charge the jury in manner and form as requested by plaintiff, and did charge the jury substantially as follows in the above questions, "An important question involving the construction of the patent, has been made and argued with great force. This is a question exclusively for the consideration of the Court. The plaintiffs contend that Norcross' invention consists of two separate improvements. First. The use and application of rocker-boxes, and a swinging frame to produce lateral motion of the saw. Second. The action of the belt by the force of elasticity in connection with the pulleys, to restore the saw to line when deflected from its right course.

These are claimed by the plaintiffs' counsel as separate and independent improvements, and both covered by the claim of Norcross. The claim that defendants have infringed the patent by the use of a spiral spring in the back end of the mandril, the office of which is to restore the saw to line, which is claimed to be a mechanical equivalent for the belts in connection with the rocker-boxes and swing frame. The defendants counsel insist that the invention of Norcross as set out in the patent is a combination of rocker-boxes, a swinging frame, and the suspension of the frame by the driving belt. They insist that these elements are claimed as an entire structure or machine, and that there can be no infringement unless the defendants have used all its parts or elements, and that as they do not use the swinging frame or rocker-boxes, they do not infringe, and secondly, they insist that their metallic spring is not the same or an equivalent for the belt, and its connections in the Norcross invention. The language of the patent seems, in my judgment, to contemplate a machine made up of a combination of different parts, all necessary to its harmonious working as a unit. It seems hardly possible to resist the conclusion that the machine was arranged and combined so as to produce lateral motion and the restoration of the saw to line in case of diverging. There is no intimation that any one of the appliances are separate and independent inventions. I am obliged to state as my view of the proper construction of this patent, that it claims a struc-

ture or machine in combination, or composed of a combination of different elements. There is certainly a great force in the fact that Norcross could not have claimed the belt *per se*, as a novelty, and that it could only be claimed in combination with the rocker-boxes and the swinging frame, for it is only in connection with them that the belt could operate as a restoring agent, and this would seem sufficient to show that it was not contemplated as a separate invention, but as one of the parts of the entire combination. I have regretted somewhat, that I have been brought to this conclusion, as I was very desirous that the jury should take the entire case upon the facts untrammeled by the legal question of construction. I do not understand it to be claimed, that except in the use of the equivalent of the spring for the belt, there is any infringement. Still, upon the question of identity, it will be for the jury to inquire whether there is any thing equivalent to the swinging frame and rocker-boxes of Norcross contained in the defendants' machine; but if the defendants have not used the swinging frame or an equivalent for it, the plaintiffs cannot recover. Upon this question of infringement I have but a word to say. The evidence has been very full. I will remark that it is not a question as to the precise form or size of the structure, but the question is whether the principle of the two things is alike. The patentee is protected against any other device which involves substantially the principle of his invention, but if another effects the same results by means different in their principle and application, there is no infringement. If the defendants have used the whole combination of the plaintiffs, and that combination is new and useful, it will then be your duty to say what shall be the amount of recovery against the defendants, and the rule is to give the actual damages. To which charge of the Court as given, and to which refusal to charge, as requested by plaintiffs' counsel, the plaintiffs excepted, as well as to all the aforesaid rulings of the Court, and prayed that for all the adverse rulings of the Court as aforesaid, a bill of exceptions might be signed and sealed, and for as much as the rulings aforesaid do not appear of record, it is ordered that this bill of exceptions may be recorded, and it is signed and sealed accordingly, and ordered to be recorded. H. H. Leavitt. [seal.] And now here, to wit: on the fifteenth day of June, in the year of our Lord one thousand eight hundred and sixty, "this cause came on again to be heard upon the motion of the defendants to enter a judgment on the verdict herein, on consideration whereof, it is ordered that said motion be sustained. It is therefore considered that said defendants go hence without day, and recover of said plaintiffs their costs in this behalf expended, taxed at $——. And now here, to wit: on the twentieth day of June, in the year last aforesaid, came the aforesaid plaintiffs, and filed and executed a certain bond for writ of error, which is clothed in the words and

O. B. K., 554.

figures as follows, to wit: Know all men by these presents,
Bond. that we, F. C. Butler, Jr., and John Pollock, are held and firmly bound unto Henry and Frederick J. L. Blandy, in the penal sum of fifteen hundred dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators, sealed with our seals, and dated this twentieth day of June, A. D., 1860. The condition of the above obligation is such, that whereas the said Lee and Leavitt, have taken an appeal from a certain judgment rendered against them in favor of the said H. and J. L. Blandy in the Circuit Court of the United States, for the Seventh Circuit and Southern District of Ohio, to the Supreme Court of the United States. Now, if the said Lee and Leavitt shall pay the full amount of the condemnation money in said Supreme Court and costs, in case a judgment shall be entered therein in favor of the appellee, then this obligation to be void, otherwise in full force and virtue in law.

F. C. BUTLER, Jr. [seal.]
JOHN POLLOCK. [seal.]

Approved by

H. H. Leavitt.

Exhibit "A."

The United States Patent Office,
To all to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy from the records of this office, of letters patent issued to N. G. Norcross, January 15, 1850. The application for the said patent was filed in this office, December 12, 1849.

In testimony whereof, I, W. D. Bishop, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this fifth day of November, in the
[seal.] year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States, the eighty-fourth. (Signed,)

WILLIAM D. BISHOP.

The United States of America, No. 7027,
To all to whom these letters patent shall come:

Whereas, Nicholas G. Norcross, of Lowell, Massachusetts, has alleged that he has invented a new and useful improvement in circular saw-mills, which he states has not been known or used before his application, has made oath that he is a citizen of the United States; that he does verily believe that he is the original

and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose. These are, therefore, to grant, according to law, to the said Nicholas G. Norcross, his heirs, administrators or assigns, for the term of fourteen years from the fifteenth day of January, one thousand eight hundred and fifty, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Norcross, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed. Given under my hand, at the city of Washington, this fifteenth day of January, in the year of our Lord one thousand eight hundred and fifty, [SEAL.] and of the Independence of the United States of America the seventy-fourth.

T. EWING,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

THOMAS EWBANK,
Commissioner of Patents.

The schedule referred to in these letters patent, and making part of the same—

To all to whom these presents shall come:

Be it known, that I, Nicholas G. Norcross, of Lowell, in the county of Middlesex, and State of Massachusetts, have invented certain new and useful improvements in hanging circular saws, and that the following is a full, clear and exact description of the principle or character which distinguishes them from all other things before known, and of the usual manner of making, modifying and using the same, reference being had to the accompanying drawing which forms a part thereof. The nature of my invention consists in suspending the saw so that it can have a lateral vibration; and when thrown out of line, will recover itself by the action of the drawing belt, and the arrangements of the parts by which it is sustained, while at the same time, the arbor has no lateral play in its boxes, and is made to fit close, with shoulders to prevent the oil from getting out while in ope-

ration, a matter of great importance when the motion is rapid, as in circular saws. This is effected by supporting the boxes in which the journals of the arbor run upon—standards to which said boxes are jointed, and which are themselves jointed to the foundation to which they are attached; so that the arbor is kept horizontal, while it is allowed a suficient lateral play, the motion being in a curved line, and of course inclining downward, as the top of the standards recede either way, from a vertical position; to sustain this frame upright, the driving belt passes around the pulley on the arbor, up over a driving pulley above, and thus holds the frame up to the proper point, so that the saw is actually suspended by the belt, while it is kept steady and made to run properly by the frame below. By this arrangement it will be seen that while the slightest force will cause the arbor to deviate a little laterally. Constant tendency of the re-acting agent is to bring it back to place again; by this means I am enabled to use a much thinner saw, and save material and power to a great degree. To enable others, skilled in the art, to make and use my invention, I will proceed to describe its construction and operation. I construct my circular saw frames in any of the known forms, and apply thereto shafts, screws, pulleys and other appendages of circular saw frames; but in order to obviate the danger of heating and warping of the saw, and to prevent the frequent departure from its course, arising from the saws, contact with knots, and otherwise; and in order to make a saving in any given amount of power, and to enable any one to use the circular saw for sawing boards, logs and heavy timber, I make the feet of the standard in the boxes, as shown at B, in the accompanying drawing, stand on gudgeons or pivots, to give the frame a lateral motion to any desired extent. The saw shaft passes through rocker-boxes (C,) and I hung said boxes on pivots or gudgeons in boxes (E,) all of which so apply themselves to the motion of the frame, as to prevent the binding of the bearings in the boxes; I also fix screws or guides at boxes (F and E,) upon each side of the frame to regulate the motion; these screws or guides may, however, be fixed elsewhere upon the frame, and secure the same desired result. The four legs of the standard stands in the boxes upon gudgeons, as aforesaid, on one side of the circular saw, and when in operation the saw moves freely and without hindrance from knots, heat, warp, and without any other of the causes which have hitherto operated to prevent its successful working in large logs and timber. The driving power is communicated from above by a belt.

What I claim as my invention, and desire to secure by letters patent, is the application to circular saw frames of rocker-boxes and a swing frame, as herein set forth, and suspending said frame

in position by means of the drawing belt, as above described, for the free and successful operation of the saw by the motion before mentioned.

Witness,
METZOR F. HOBBS,
F. GOULD.
} N. G. NORCROSS.

(For drawing referred to, see original, page 38.)

(*Exhibit B.*)—Referred to in the foregoing Bill of Exceptions.

THE UNITED STATES PATENT OFFICE,
To all persons to whom these presents shall come, *greeting:*

This is to certify, that the annexed is a true copy from the records of this Office, of letters patent issued to George Page, July 16, 1841, to which is annexed a true copy from the records of the certificate of the Acting Commissioner extending said letters patent.

In testimony whereof, I, Philip F. Thomas, Commissioner of Patents, have caused the seal of the Patent Office to be [SEAL.] hereunto affixed this 30th day of April, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States, the eighty-fourth.

PHILIP F. THOMAS.

THE UNITED STATES OF AMERICA, No. 2174,
To all to whom these letters patent shall come:

Whereas George Page, Baltimore, Maryland, has alleged that he has invented a new and useful improvement in the portable circular saw-mills, which he states has not been known or used before his application, has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvements, and that the same not, to the best of his knowledge and belief, been previously known or used, has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvements, and praying that a patent may be granted for that purpose.

These are, therefore, to grant, according to law, to the said George Page, his heirs administrators or assigns, for the term of fourteen years from the sixteenth day of July, one thousand eight hundred and forty-one, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said improvements, a description whereof is given in

the words of the said George Page, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed. Given under my hand, at the city of Washington, this sixteenth day of July, in the year of our Lord one thousand eight hundred and forty-one, [SEAL] and of the Independence of the United States of America, the sixty-sixth.

DANIEL WEBSTER,
Secretary of State.

Countersigned and sealed with the seal of the Patent Office. HENRY L. ELLSWORTH,
Commissioner of Patents.

The schedule referred to in these letters patent, and making part of the same—

To all whom it may concern:

Be it known that I, George Page, of the city of Baltimore, in the State of Maryland, have invented certain improvements in the manner of constructing a saw-mill for sawing timber, which I denominate the portable circular saw-mill, and I do hereby declare that the following is a full and exact description thereof: Fig. 1, in the accompanying drawing, is a prespective view of my portable saw-mill; *A A* is a square frame which sustains the saw and the driving apparatus; this frame is firmly mortised and bolted together, so that it may be readily lifted from the ground and placed upon a suitable carriage for transportation; its usual length is about seven feet and a half, and its width four feet and a half; B is the driving-pulley to which the motive power of horses is to be applied in any ordinary modes; this pulley is placed upon the shaft C, of the circular saw D; the shaft C has free end play within the boxes in which it runs, so as not, in any case, to have an end bearing against a shoulder; it may, in fact, be a cylinder of the same diameter throughout; the saw is kept in place entirely by the action of the friction rollers which bear upon its two sides near its periphery; one of these are seen at *a*, the other being immediately to it.

These friction rollers are made adjustable by causing them to revolve on pins which are attached to two plates of metal, placed one upon the other, having tightening screws passing through slats in them and entering the frame. The uppermost of these plates is marked *b*, and the tightening screws are seen at *c c*. The saw D is made with its teeth in a peculiar form, by which they are enabled to be fed into the timber more deeply than can be

done with teeth in the forms usually employed, and the saw may therefore be driven with a speed not exceeding one-half of the ordinary velocity of such saws; and from this circumstance, can build with the manner of sustaining the saw at its edge, without strain from its centre, and with the manner of setting the teeth, it is kept free from all tendency to heating and buckling, and is thereby well adapted to the sawing of ordinary logs, which, though frequently attempted by means of the circular saw, has been abandoned from the impossibility of causing the edge of such a saw to run true for any length of time. Figure 2, shows a portion of my saw with the manner of forming the teeth; the dotted lines represent the periphery of the circle which the teeth described, and the line *e f*, the manner in which the periphery is filed away between two contiguous teeth, which filing away is intended to correspond with the amount of feed given; by which device the saw is made to run with unusual smoothness, and the part cut away, instead of coming out in the ordinary form of saw-dust; exhibits frequently the appearance of parings or shavings, five or six inches in length. The saw is usually about four feet in diameter. The plate is made of the usual spring temper of saw-plates, but the points of the teeth I harden to the usual temper of chisels, and other cutting instruments; this is readily effected by heating them between red hot tongs, quenching, and drawing them down to the desired temper; the saw, if desired, may be sharpened by grinding, by means of a suitable apparatus, instead of by filing. The teeth are not to be set in the usual way, but are to be upset at the point by means of a punch which will widen them out, and will enable them to run clear and to cut unusually clean. E is a grooved whirl on the saw shaft carrying two bands; one of these bands g, passes round the whirl, F, and the other h, round the whirl G, the latter slipping upon the whirl, excepting when the log is to be backed upon the shaft of the whirl F is the pinion H, which gears into the wheel I. The whirl G is fixed upon the outer end of the shaft J of this whirl, and the pinion K upon its inner end. The pinion K mashes into a rack on the under side of the rack-rail L L, for moving the carriage and log in the ordinary way. The rapidity of the feed will, of course, be governed by the relative size of the whirls, wheels and pinions which constitute the gearing, and may be regulated at pleasure. The whirls E and G, and the band *h*, are for backing the log, which is done without interrupting the motion of the horses, and is effected in the following manner. The pinion H is to be thrown out of gear with the wheel I; to accomplish this, the box that sustains the end of the shaft to which the pinion H is attached, is affixed in the sliding piece M, and may be moved back by means of the lever N, and be held by a pin *i*,

catching into a notch in the latch-piece j. The loose band *h* is then tightened by bearing upon the lever O, which raises a tightening pulley against the lower portion of the band *h*, thus reversing the ordinary motion of the lower portion of the band *h*, thus reversing the ordinary motion of the wheel I and pinion K, and backing the log P P, is the saw carriage, and Q Q, the ways on which runs. I make the carriage in sections, or lengths, admitting of convenient removal; they need not be longer than the frame A A, although they are not restricted to any particular length. Two such sections are shown . . . as connected with each other by a clasp, or saddle piece, at R. These sections may either represent a single carriage, as shown in the drawing, the head block being placed upon them, and the tail block upon the other, or they may represent two separate carriages connected together by the piece R, and each being furnished with its own proper head and tail block, and carrying distinct logs. I usually employ two carriages in this way, each of which may consist of combined sections. By this means time is much economized, as one of the logs may be set whilst the other is being sawed. Then it is necessary to use a long carriage; it may be composed of the sections only, of ordinary length, by removing them to the proper distance from each other, and connecting them together by an additional rack-rail, L L, which manner of combining these parts will have all the effects of a long carriage, said additional rack-rail to be secured at its two ends by any convenient means. The ways Q Q, upon which the carriage is to run, may be prepared in the woods, in any place in which the saw-mill is to be used, any suitable logs being hewed for that purpose; and the strips of iron *K K*, which constitute the tongue, and upon which the carriage is to slide, being nailed on to them. The carriages may be about three feet in width. S S are the head and tail blocks, which are furnished with dogs or hold-fasts, particularly to the kind of saw-mills; *l l* is a rectangular piece of iron, the horizontal portion of which *l* slides between the cheeks of the head and tail blocks in grooves prepared for that purpose, and vertical part *l* has a screw in through it, which is turned by a wrench, is pointed at its end, and is screwed into the log. The log is to be set by means of a screw *n*, working in a nut on the lower side of the piece *l*, and turned by the handle O. If the screws *n n* have threads of one-fourth of an inch, four turns of the handle O, will, of course, set the log an inch; and whatever may be the size of the threads, they will serve as perfect gauges in the setting upon the same principle. Having thus fully described the manner in which I construct my Improved Portable Circular Saw-Mill, and shown the use and operation of the respective parts, what I claim therein is new, and desire to receive by Letters Patent is as follows:

I claim the manner of affixing and guiding the circular saw, by allowing end play to its shaft, in combination with the means of guiding it by friction-rollers, embracing it near to its periphery, so as to leave its centre entirely unchecked laterally. I do not claim the use of friction rollers embracing and guiding the edge of a circular saw, these having been previously used for that purpose, but I limit my claim to their use in combination with a saw having free lateral play at its centre. I claim the particular manner in which I have applied said friction rollers by attaching the pins or pivots, upon which they are sustained and revolve, to two plates of metal placed upon each other, and both held by the same set screws, as set forth. I claim the manner of forming a long carriage from two short sections, by coupling or uniting said section by means of the rack-rail only, as described.

GEO. PAGE.

Witness,
THOMAS P. JONES,
THOS. COPELAND.

(For drawing referred to, see original, page 48.)

Whereas, upon the petition of George Page, of Washington, District of Columbia, for an extension of the within patent, granted on the sixteenth day of July, 1841, the undersigned, Acting Commissioner of Patents, in accordance with the 18th section of the act of Congress, approved the 4th day of July, 1836, entitled, "An act to promote the progress of the useful arts, and to repeal all acts heretofore made for that purpose," and the act approved the 27th day of May, 1848, entitled, "An act to promote additional examiners in the Patent Office, and for other purposes," did, on this 14th day of July, 1855, certify that the said patent ought to be extended.

Now, therefore, I, S. T. Shugert, Acting Commissioner of Patents, by virtue of the power vested in me by said acts of Congress, do renew and extend the said patents, and certify that the same is hereby extended for the term of seven years from and after the expiration of the first term, viz: from the 16th day of July, 1855, which certificate being duly entered of record in the Patent Office, the said patent has now the same effect in law as though the same had been originally granted for the term of twenty-one years.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto annexed the 14th day of July, 1855, [L. S.] and of the Independence of the United States, the eightieth.

S. T. SHUGERT,
Acting Commissioner.

UNITED STATES OF AMERICA,
Southern District of Ohio. } ss.

I, John McLean, Jr., Clerk of the Circuit Court of the United States, within and for the Seventh Judicial Circuit and Southern District of Ohio, do hereby certify that the foregoing is a true and accurate transcript of the record of the proceedings in case of Gustavus L. Haussknecht against Claypool and Lynn, as the same remains on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at Cincinnati, this 27th day of [SEAL.] November, A. D., 1860, and the 85th year of the Independence of the United States of America.

Attest, JNO. McLEAN, JR.,
Clerk.

THE UNITED STATES OF AMERICA,
Supreme Court of the United States.

To Henry Blandy and Frederick J. L. Blandy, greeting:

Whereas, Rufus S. Lee and William D. Leavitt obtained the allowance of our writ of error to the Circuit Court of the United States for the 7th circuit and Southern District of Ohio, directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings and judgment in an action of trespass in the case wherein you, the said Henry and Frederick J. L. Blandy in that action lately recovered against the said Lee & Leavitt a judgment final in said case for costs, as by the said record in the said cause remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said writ of error we are informed, and our said writ of error granted, issued and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby commanded and cited to be and appear before the Judges of the said Supreme Court, at the city of Washington, at the next term of said Court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness, the Hon. Roger B. Taney, Chief Justice of the United States of America, this 26th day of November, [SEAL.] in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the 85th.

H. H. LEAVITT,
Judge of the Circuit Court of the U. S., District of Ohio.

This writ was served upon us November 26, 1860.

COFFIN & MITCHELL,
Attorneys for Blandy & Blandy.

SUPREME COURT OF THE UNITED STATES, United States of America. } ss.

The President of the United States of America, to the Honorable, the Judges of the Circuit Court of the United States for the 7th Circuit and Southern District of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in the said Circuit Court before you between Rufus S. Lee and William D. Leavitt, plaintiffs, and Henry Blandy and Frederick J. L Blandy, defendants, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf. You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first Monday in the month of December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this twenty-
[SEAL.] second day of June, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the 84th.

Attest, JNO. M. McLEAN,
Clerk of the Circuit Court of the United States,
For the 7th Circuit and Southern District of Ohio.

Allowed by H. H. LEAVITT,
Judge of the Circuit Court of U. S., for the Southern District of Ohio.

RUFUS S. LEE and WM. D. LEAVITT, *vs.* HENRY & FREDERICK J. L. BLANDY.	Supreme Court U. S., December Term, A. D., 1860.

Rufus S. Lee and Wm. D. Leavitt, plaintiffs in error, come and say that there is manifest error in the aforesaid record and proceedings in this, to wit:

1st. The Circuit Court below erred in refusing to permit the plaintiff, Wm. D. Leavitt, to testify as a witness in the cause.

2d. Said Court erred in permitting defendants to ask the witness, George H. Knight, in cross-examination, the question appearing in record.

3d. Said Court erred in permitting the notices given by defendants, attacking plaintiffs' patent, to be filed on the trial, and proof to be given under the same.

4th. *The Court erred in admitting the patent of Edward Bancroft in evidence.*

5th. The Court erred in permitting the witness, Jabez Reynolds, to answer the question shown in the record.

6th. Said Court erred in excluding the circular of Lane & Bodley. Said Court erred in refusing to charge the jury as requested by plaintiffs.

7th. Said Court erred in its charge to the jury, as given.

8th. Said judgment should have been for plaintiffs instead of defendants. Wherefore they ask that said judgment be reversed, and they be restored to all things lost thereby.

GEORGE W. LEE, and
SAMUEL S. FISHER,
Attorneys for Plaintiffs in Error.

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Lee & Leavitt
vs
Blanchy & Blanchy

SUPREME COURT, U. S.

ERROR TO

CIRCUIT COURT, U. S.

AT CINCINNATI.

LEE & FISHER,
for Plaintiff in Error.

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SUPREME COURT, U. S.

RUFUS S. LEE and
WM. D. LEAVITT
versus
HENRY & FREDERICK BLANDY.

Error to Circuit Court, U. S., Southern District of Ohio.

The Court below refused to permit the plaintiff Leavitt to testify, at the trial, as a witness in his own behalf. To this ruling he excepted, and this is the first point presented by the Record, and the first error we claim.

We maintain that—

A PARTY TO THE SUIT IS A COMPETENT WITNESS IN HIS OWN BEHALF IN OHIO.

This case was tried at the April term, A. D. 1860, of the Circuit Court of the United States, sitting at Cincinnati, Ohio; and in the year 1853 the Legislature of the State of Ohio passed a statute entitled, "An Act to establish a Code of Civil Procedure." Section 310 of this Code reads thus: "No person shall be disqualified as a witness in any civil action or proceeding by reason of his interest in the event of the same, as a party or otherwise, or by reason of his conviction of a crime, but such interest or conviction may be shown for the purpose of affecting his credibility." This statute was

in full force in Ohio at the time of this trial; and in all the Ohio courts, except this, the plaintiff would have been allowed to testify without hesitation or objection.

Now, upon what principle is it, that a Federal Court sitting in Ohio presumes to administer to the citizens of Ohio laws not her own? It certainly will not increase the regard of the citizens of any State for the Federal tribunals, to know that laws *foreign* to those made by its citizens are administered and enforced therein. We claim that the Federal Courts of Ohio are Ohio Courts, and just as much bound to administer Ohio laws as any other Courts in the State. The doctrine that the "*lex loci*" shall control the rights of parties, and shall be enforced by all Courts, has been recognized in its fullest extent from the earliest days of English jurisprudence; and no civilized judiciary ever attempted to enforce among any people (except a conquered nation) laws other than those of the particular people and place. The Federal tribunals, and especially the Supreme Court, have strenuously endeavored to produce uniformity between their decisions and those of the Courts of the State where such tribunals were located. They have, therefore, always followed the decisions of the highest State Courts, and the practice of State tribunals, unless they were found not to accord with justice, the Constitution of the United States, or the acts of Congress.

We claim, therefore, if this question were to be decided upon the original principles of justice and law, or the well settled policy and practice of the Federal tribunals, the error would be apparent.

But we consider the question is settled by the act of

1789, and the construction thereof given by this Court. The 34th section of the judiciary act of 1789 provides "that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the Courts of the United States, in cases where they apply." Now it would seem to require no proof to show that a rule of evidence was "a rule of decision," within the meaning of this act. But this Court has expressly decided that question also. See McNiel *vs.* Holbrook, 12 Pet., p. 84.

This was a suit brought in Georgia, by the endorser against the maker of promissory notes. The statute of Georgia had provided that such notes should be admitted as evidence, without proof of the hand-writing of the assignor thereof. Upon the trial, these notes were permitted, by the Circuit Court in the District of Georgia, to go in evidence under this statute of Georgia, without proof of their endorsement to the plaintiff, and a judgment having been rendered against the defendant below, he assigned this omission to require proof of the endorsement for error.

In deciding the case, Chief Justice Taney says, in speaking of this very 34th section of the act of 1789: "The object of the law of Congress was to make the rules of decisions in the Courts of the United States the same with those of the States, taking care to preserve the rights of the United States by the exceptions contained in the same section. Justice to the citizens of the several States required this to be done; and the natural import of the words used in the act of Congress in-

cludes the *laws in relation to evidence*, as well as the laws in relation to property. We think they are both embraced in it, and as by a law of Georgia the endorsement on these notes was made *prima facie* evidence that they had been so endorsed by the proper party, we think the Circuit Court was bound to regard this law as a rule of evidence."

Again, in case of Sims *vs.* Hundley, 6 How., 1, where the question was, whether a Notary's certificate, made evidence by the statute of Mississippi, was admissible in the Circuit Court of the United States, for Mississippi, Chief Justice Taney again says: "It is true that, upon general principles of commercial law, this certificate would not be admissible. But it is made evidence by the statute of Mississippi, and the rules of evidence prescribed by the statute of a State are always followed by the courts of the United States, when sitting in the State, in commercial cases as well as in others."

These cases are certainly conclusive, but this very question has been met and decided by several Federal judges on the circuit, and among them by Justices Curtis and Nelson. In case of United States *vs.* Dunham, decided by Judge Curtis in the District of Massachusetts, and reported in the Monthly Law Reporter for July, 1859, Judge Curtis admits the evidence of parties to the suit, under a statute of Massachusetts, of the same kind as the Ohio statute, and the learned Judge says: "I consider it to be settled that the State laws of evidence are rules of decision in civil trials at the common law, under the 34th section of the judiciary act."

This same question was decided in the same way by Mr. Justice Nelson, in one of the Districts of New York,

in the case of United States *vs.* Furnass, and the statute of New York, passed upon by the learned Judge, is the same in substance as the Ohio statute.

The same question is said to have been also so decided by the late Judge Ingersoll, and also by Judge Sprague, but we have not seen these opinions.

Certainly this error is apparent. But it may be said that there was a rule in the Court below, which disqualified this witness. It is only necessary to reply to this, that the Court below could not abrogate or overcome a statute of the State by a regular rule, any better than by a decision. The rule and the ruling stand on the same footing. The Court below could not legislate a statute out of existence by a rule, any more than they could adjudicate it out of existence by a ruling. No notice that the plaintiff would testify as a witness was necessary in the Court below. Section 313 of the Ohio code, which requires such notice, was repealed April 12th, 1858. See section 3rd of the Statute of Ohio, of said date, entitled, "An Act to amend the 313th and 314th sections of the Code of Civil Proceedure."

In Smith *vs.* Carrington, 4 Cranch, 62, this Court held, that if evidence were illegally admitted, the Court could not inquire into its weight or importance, but would reverse the judgment; and we suppose the converse of this proposition is equally true, and if evidence be illegally rejected, this Court will not inquire into its importance, but will reverse the judgment.

It is apparent that it would be impossible to show the weight or importance of the plaintiff's evidence, but certainly a party must be presumed to understand his own case. It must also be presumed he would testify

to matters material to his interests. Hence, by the common law he was excluded from testifying at all, for fear that by reason of his interest the materiality of his testimony would outweigh its truth.

It seems to us, in every possible view, the error of the Court is apparent, and that the judgment should be reversed.

II. We say that the Court erred in construing the plaintiff's patent to be for a combination of the rocker boxes and swing frame with the driving belt. We claim that two improvements are embraced in this patent; that the office of each is distinct from the other; and that they work at antagonism in the same machine, though they conduce to effect a common result. We say that the first improvement consists in providing a means of permitting lateral motion, or "end play," in the saw arbor, shaft, or mandril, to relieve the saw from heating and warping, by reason of the springing in of the timber upon it after the saw passes the centre of the log, or when it strikes a knot or other hard obstruction. This "end play" is permitted and produced by means of the rocker boxes and swing frame. This is to allow and induce the mandril to fall down to one side. The second improvement consists in restoring the saw to line by lifting the fallen shaft back to a horizontal position. This is done by the elasticity of the belt alone,—which, by its tension and contractability, lifts the shaft up. By reference to the patent and drawings it will be seen that the saw with its shaft "is actually suspended by the belt."

We admit that the driving belt had been used before to revolve and drive the saw and shaft, but to use this

same belt to lift, by its elasticity, the shaft back to line, we claim is original with Norcross. It is obvious that here the belt performs two separate offices. 1st. It drives the shaft; this is old. 2d. It lifts the shaft back into line by its upward elastic tension and contraction; this is entirely new.

Now, how could two things be more distinct than the rocker boxes and swing frame, which, together, throw the shaft down to one side, out of line; and the belt which, alone, lifts this same shaft up and brings it back into line? The very nature of these two improvements demand, imperatively, that they shall be separated by the Court, unless the patentee has riveted them together with bonds that can not be sundered.

The Court below said the patentee had riveted and combined the two together, and could not recover for the separate use of either. We aver this was an error. Let us turn to the specifications. Says the patentee, in the beginning, I have invented certain "new and useful improvements." This is plural. We learn, then, that there is more than one improvement. A few lines onward he says, this is "the principle or character which distinguishes them." Thus we are again informed that there is more than one improvement. Again he says: "The nature of my invention consists in suspending the saw so that it can have a lateral vibration." It will be seen that this is done by the rocker boxes and swing frame alone. The belt has nothing to do with this, "and, when thrown out of line, will recover itself by the action of the driving belt and the arrangement of the parts by which it (the driving belt) is sustained." Here, then, the patentee has told us that these two im-

provements are separate; that the rocker box and swing frame permit the shaft to fall down,—and that, on the other hand, the belt alone lifts the shaft up. He now describes the rocker boxes, and joints and standards which make the swing frame. He then shows the office of the boxes and frame, "so that the arbor (shaft) is kept horizontal, while it is allowed a sufficient lateral play, the motion being in a curved line, and, of course, inclined downwards."

Now he speaks again of the belt: "To sustain this frame upright (lift the shaft up) the driving belt passes around the pulley on the arbor, over the driving pulley, and thus holds the frame up to the proper point, so that the saw is actually suspended by the belt." What can be more distinct from the boxes and frame, which permit the shaft to fall down, than this office of the belt, which lifts it up?

But again he says: "While the slightest force will cause the arbor (shaft) to deviate a little laterally, the constant tendency of the reacting agent (the belt) is to bring it back to place again." He now describes his saw frame, which, he says, may be "in any of the known forms, but in order to obviate the danger of the heating and warping of the saw, and to prevent the frequent departure from its course, arising from the saw's contact with knots and otherwise. * * * I make the feet of the standard in boxes * to give the frame a lateral motion." Here, again, we see the office of the boxes and swing frame is "to give lateral motion," to permit the saw to fall downwards, as distinguished from the belt, which, we are told, is "the reacting agent to bring it back to place again."

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The patentee then goes into the details of construction, and words his claim thus: "What I claim as my invention, and desire to secure by Letters Patent, is the application to circular saws of rocker boxes and a swing frame, as herein set forth; [Suppose he stopped here, would not his patent be good?] and suspending said frame in a position, by means of the driving belt, as above described, for the free and successful operation of the saw by the motion before mentioned." Suppose, after the words "set forth" in the claim, were placed a period and the figure 2d, can any one dispute there would be two clear and separate claims, upon an infringement of either of which Norcross might recover? Then shall Norcross be defrauded of his rights by a mere omission in punctuation or enumeration, when all through his patent he has so very clearly described the distinct and separate nature of his two improvements? Courts do not so construe patents. The nature of these two improvements demands that they should be separately considered. The specifications separately describe them throughout. Their separate and antagonistic office is clearly defined by the patentee. Each of the improvements is separately patentable.

After claiming the rocker boxes and swing frame for lateral motion, the patentee closes his first claim in the usual form of closing a claim, "as herein set forth." He then drops forever the boxes and frame, and proceeds to claim the belt to suspend the frame. This claim of the belt is a regular second claim of his patent, and he can not be deprived of it because the conjunction "and" happens to intervene between these two claims instead of a period. To hold this would be con-

trary to the well-established decisions, both of this Court and others. Patents are to be construed liberally, and so as to protect the whole invention, all of which, it is to be presumed, the patentee intended to claim. See Curtis on Patents, sec. 126–132; Parker *vs.* Haworth, 4 McLean, 372; Grant *vs.* Raymond, 6 Pet., 218; Evans *vs.* Eaton, 3 Wheat, 454; Hogg *vs.* Emerson, 6 How., 437; Hogg *vs.* Emerson, 11 How., 587; LeRoy *vs.* Tatem, 14 How., 181; Winans *vs.* Denmead, 15 How., 333, and cases there cited; Morris *vs.* Barrett & Waters, pamphlet; Haworth *vs.* Hardcastle, Web., P. C., 484.

III. We claim the Court erred in permitting the defendant to ask the witness, George H. Knight, on cross-examination, the following question: "Has the mode of driving machinery by a belt ever been used before, and how old is it?" It will be observed that the defendant's notices do not mention Knight as a witness to attack the novelty of this patent, nor did they propose to prove by him any fact averred in their notice, but without a notice they were permitted to make proof that "the mode of driving machinery by a belt" was old. Now, what was "the mode?" It was the patented mode. It could be nothing else. How does this patented mode differ from other modes? We claimed it differed in suspending the saw by the belt, so as to use the elasticity of this belt. Then, to prove "the mode" (this patented mode) old, went to utterly destroy our patent,—whether it were a combination of the rocker boxes, swing frame, and belt, or whether it were to be separated into two claims; for, if driving machinery by belt, with rocker boxes and swing frame, was the pat-

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ented mode, as defendants claimed, then *it* was "the mode" proved to be old; and if driving machinery by belting from above, so as to use the elasticity of the belt to lift up the shaft, was the patented mode, as we claimed, separately, then it was "the mode" proved to be old; and, under either construction of the patent, the testimony was inadmissible. This seems to us clear error.

IV. Again: we say notices attacking the novelty of a patent should be filed thirty days before the trial. Defendant's notice was not filed thirty days before the trial, and no evidence to prove want of novelty should have been admitted under it. See section 15 of Patent Act, 1836; Phelps *vs.* Comstock, 4 McLean, 525.

V. We claim the patent of Edward Bancroft was improperly admitted in evidence. The defendants gave notice that, to attack the novelty of Norcross' patent, they would offer a patent in evidence, granted to Edward Bancroft in the year 1849. Now, the record shows that two patents somewhat similar in nature were granted to Edward Bancroft in 1849. We wrote to the Patent Office for a copy of the patent granted to Edward Bancroft in 1849. The Office sent to us the copy, which the record shows we produced on trial, but defendants produced another and entirely different patent, granted in the same year to this same man. Now, there can be no better illustration of the necessity of holding a defendant to particularity in his notice of defense than this matter affords; and the whole object of the notice required by the 15th section of the Patent Act of 1836 would be entirely defeated, if, under so

loose a notice, such a patent could be put in evidence. How many patents of like general character are often granted to the same man in the same year? Under our system of re-issues they are legion. What assurance, then, can a plaintiff have, which patent will be relied upon and put in evidence, unless it is clearly distinguished from the other?

It is true that the 15th section does not specify in so many words that a defendant shall give notice at all of his intention to introduce an American patent in evidence, but the whole meaning and spirit of this section clearly requires it, and from the fact that some notice was attempted to be given, it is obvious defendant understood such notice was required. That section provides that notice of the "previous invention" shall be given, and "the names and places of residence of those whom he (the defendant) intends to prove possessed a prior knowledge of the thing."

We suppose this Bancroft patent could only be offered to prove that Bancroft possessed this knowledge. Now, the notice was entirely insufficient to justify such proof. The present residence of Bancroft was not given at all. He is merely called "Edward Bancroft, of the City of Philadelphia;" but if it be granted that the presumption from this title is that Philadelphia is his present residence, still we say it is not sufficient to give the city where he lived. The street and number must be given, or some more definite description than this, before any proof by the patent, or by witnesses, can be made of Edward Bancroft's previous knowledge. See Fisher *vs.* Dewick, 4 Bing., N. C., 706; Coryton on Patents, 189; Hindmarch on Patents, 175.

These English authorities show that the English courts have gone so far as to compel such particularity of notice as to identify the street and factory where the thing was used, though their act only provides that defendant shall state "the place or places, at or in which, and in what manner the invention is alleged to have been used or published prior to the date of the Letters Patent." Statute 15, 16, Vict., 83, sec. 41.

If the English courts have gone so far under so vague a statute, in order to guard a patentee from surprise, much more should American courts carry out the spirit as well as letter of a statute so strong and clear as ours. And both the elementary authors and this Court have often recognized the doctrine of strictly construing the defendant's notice, and of guarding the patentee from such surprises. See Curtis on Patents, section 372; 2 Green Ev., 498; Phil. & Trent. R. R. *vs.* Stimpson, 14 Pet., 459; Silsby *vs.* Foote, 14 How., 218.

The Court will recollect that in Silsby *vs.* Foote the defendant gave notice that the patented invention had been described in Ure's Dictionary, which numbered some 1,300 pages, and because defendant had not specified the page on which he relied, this Court held the book could not be put in evidence. The Court say, in speaking of the object of the notice: "This end was not merely to put the patentee on inquiry, but to relieve him from the necessity of making useless inquiries and researches, and to enable him to fix with precision upon what is relied on by the defendant, and to prepare himself to meet it at the trial. This salutary object should be kept in view, and a corresponding disclosure exacted from the defendant."

Now, if a defendant can not put a book in evidence because he has not specified its page, under this statute, how can he put a city like Philadelphia in evidence, when he has neither specified a number or street? Or, to state it more fairly, if we can not be compelled to look through a book to find what a defendant relies on, how can we be obliged to look through a city? It seems to us clear defendants could not have proved this previous knowledge of Edward Bancroft by witnesses, because of their defective notice. Then, how can they prove it by a patent? The patent must certainly stand upon the ground, either of a witness or a book; and, on either ground, it was not sufficiently specified, and was inadmissable. We suppose this Bancroft patent may properly be considered a "public work," within the meaning of the 12th section, and not having been sufficiently distinguished, should have been refused on the same ground as was Ure's Dictionary.

VI. We say the Court erred in permitting defendants to prove the kind of journal box used by Edward Bancroft, and described in his patent. Defendants put upon the stand, Jabez Reynolds, a witness whose name is not even mentioned in their notice, and asked him:

"Do you know anything of a journal box used by Edward Bancroft, and described in his patent?"

To this question we objected, for want of sufficient notice, but the Court overruled the objection, and the witness answered:

"I know he makes a box. This box hangs upon permanent centers, and can move either way. It is sometimes fitted up on screw centers, and sometimes on pivot centers."

Now, it will be recollected the Court, notwithstanding our objection, had already permitted defendants to prove by a witness (Knight) that our mode of belting was old,

and it was obvious that every saw must be belted in some way; and now to permit them to prove, in addition, that Bancroft had used our rocker box and swing frame, which was the effect of this answer, was, in substance, permitting defendants to prove the thing patented—whether in combination, as claimed by them; or separately, as claimed by us—to be old, and that, too, without any notice whatever. For if it be urged that this evidence of Reynolds was to establish the previous use by Bancroft, it was not admissable, for no such "public use" is averred in the notice.

The notice avers *prior invention* by Bancroft, but does not aver *prior use* by him; and if it be said that it only proved two elements of the combination old, then, when we remember that Knight had testified that the "belting mode" was old, and that every shaft must have a belt, we see that the whole combination, as claimed by defendants, was said to be old by these two witnesses; and that each part was sworn to be old, as we claimed the invention, to-wit: the mode of belting was said to be old by Knight; and the rocker boxes and frame, in substance, were said to be old by Reynolds. The authorities before quoted show that no such proof can be permitted, and the clear error of the Court becomes more apparent as we see the consequences of every step.

VII. We claim the Court erred in excluding the circular shown by Samuel R. Smith. It appears from the record that the witness, Samuel R. Smith, had testified that lateral motion was of no advantage to a saw. It appears, further, that he had patented a saw having this lateral motion; that this saw was manufactured by Lane, who was his co-partner; and that the witness sold these saws with lateral motion, and received from Lane a royalty or patent fee thereon—"a tariff," the witness calls it. It appears that a circular was issued in the name of

Lane & Bodley, the manufacturers, describing this Smith & Lane, or Lane & Bodley saw, and recommending it on account of this lateral motion, or "end play," and its automatic means of being restored to its position, which we claimed was the same thing as our belt. It appears, further, that Smith used this circular as his own, and dilivered copies of it when he sold the saw, as descriptive of its character and superiority; that he recognized this circular as his own, for he says, "I say in that circular that the rigid way is the way," &c. A portion of this circular was read to the witness on the stand, and after he had made whatever explanations he chose, we offered that portion of the circular in evidence. The defendants objected to this passage in the circular, which we had read to the witness, being given in evidence, on the ground "that the attention of the witness had not been called to the place where and the time when he delivered said circular." How idle was such an objection!

But the Court sustained it. Now, the whole object of the law which requires the mind of the witness to be directed to previous contradictory declarations or statements, whether written or verbal, is that he may have an opportunity to explain them, and that they shall not be put in evidence to impeach him by surprise, and he be thereby outraged without this chance of explanation or exculpation. 1 McLean, R., 540; 2 McLean, R., 325; Conrad *vs.* Guffey, 11 How., 492; Conrad *vs.* Guffey, 16 How., 38.

What better opportunity could ever be afforded any witness to explain any statement than we afforded this witness? We not only asked him about the circular,

but we produced it and showed it to him, and he acknowledged its authenticity and called it his, and testified that he delivered it when he sold mills, and sent it away.

Still more: we not only showed it to him, but actually read it to him, and asked him to explain it, and gave him the chance to do so. When or where he delivered it was of no consequence whatever. The thing was the same thing everywhere,—whether he sent it away by mail, or gave it to a purchaser. Its delivery and mailing merely showed its authenticity, and his knowledge of it. He not merely endorsed it by such use, but he calls it his circular in his evidence, and it was his patented saw which he and his partner had described in it.

Of what consequence, then, was it, when or where it was delivered, or whether it ever was delivered at all. It stands upon the same footing as one of his own letters would have done, if handed to him or read to him; and will it be claimed, if we had read or shown him one of his own letters with this passage in it, and asked him about it, and given him a chance to explain, we could not have put it in evidence, because it had not been delivered at the Post Office, or to the person to whom it might be addressed, or because it was a mere written statement, and not addressed at all. It seems to us that this error is also clear as sunlight.

LEE & FISHER,

Attorneys for Plaintiff.

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